



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-233—Tax liability of medical and hospital service bureaus and associations and similar health care organizations.**

Date last adopted: **May 29, 1970**

Reviewer: **Ed Ratcliffe**

Date review completed: **September 13, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document: The rules explains the application of business and occupation (B&O) tax to medical service bureaus, medical service corporations, hospital service associations, and similar health care organizations (e.g., health maintenance organizations). It specifically discusses the measure of tax when these organizations act solely as the agent of a physician, hospital, or other medical provider in offering to its members or subscribers medical services.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
X		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.



This rule should be revised to explain that RCW 82.04.322 provides an exemption for HMO premiums or prepayments that are taxable under RCW 48.14.0201.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Information now provided in AD 8233.1 (Medical service bureaus – Deferred compensation) and ETA 519.04.233 (Reporting procedures for qualified medical service associations) should be incorporated into this rule. (See ancillary review documents for ETA 519 and AD 8233.1.)

Information now provided in Det. 89-467, 8 WTD 247, should also be incorporated into this rule. This document addresses the tax-reporting responsibilities of medical service corporations and member physicians with respect to fees withheld by the corporation under a deferred compensation/retirement plan.

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule is clear and well organized. It was intended to address those situations in which a medical service bureau or similar association accepts (and has no right to) payments from subscribers as an agent for the physician members actually providing the services. The application of this rule has since been expanded to certain situations where an HMO pays over amounts received from subscribers to physicians outside the network of members.**

This rule will be more effective if the information described in the previous paragraph and in section 3 is incorporated.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **RCW 82.32.300 provides the department with authority to make rules necessary to implement chapter 82.04 RCW (Business and occupation tax). This rule aids in implementing the B&O tax by explaining how the definition of “gross income” (RCW 82.04.080) applies to medical service bureaus and other similar entities.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or



		state agencies eliminate or reduce duplication and inconsistency?
--	--	---

Please explain. **The department has the exclusive authority for implementing the B&O tax. It is standard procedure for the department to identify and inform state and other governmental agencies of any rule making that addresses issues of common interest. The department should inform the Insurance Commissioner's Office of any rule making to incorporate RCW 82.04.322.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that does not impose any administrative burdens on taxpayers that are not already imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **The rule currently results in the equitable treatment.**

9. LISTING OF DOCUMENTS REVIEWED: (Use "bullets" with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to medical service bureaus and similar entities:**

- **RCW 82.04.220 Business and occupation tax imposed;**
- **RCW 82.04.080 "Gross income of the business"; and**
- **RCW 82.04.290 Tax on . . . other business or service activities.**

Ancillary Documents (i.e., ETAs, PTBs, and Ads):

- **AD 8233.1—Medical service bureaus – Deferred compensation**



- **ETA 519.04.233—Reporting procedures for qualified medical service associations**

Court Decisions:



Board of Tax Appeals Decisions (BTAs):

- **Pilcher v. DOR, BTA 46920 (1996)**, discussed that “Rule 233 is a special rule designed to deal with medical insurance bureaus and the like, where the insurance bureau acts solely as agent of the physician with respect to payment of physician fees owed by subscribers. There is no showing that the hospital is a medical insurance bureau or a HMO so as to fit within the ambit of Rule 233, nor has Dr. Pilcher claimed as much.”
- **Group Health Cooperative v. DOR, BTA 91-11 (1992)**, determined that amounts paid to contract physicians by an HMO was not “substantively different than that physician’s relationship with any other HMO or HCSC.” Thus, Group Health was the agent of these contract physicians and amounts paid these contract physicians could be deducted under Rule 233, even though Group Health also had employees providing medical services.

Administrative Decisions (e.g., WTDs):

- **Det. 87-332, 4 WTD 205**, finds the rule to apply only to subscriber organizations (“the taxpayer does not function as a medical service bureau or “similar health organization” because it has no members nor subscribers paying contributions, fees or premiums to it. Furthermore, the taxpayer furnishes the medical and surgical services to the patient as a principal, not as an agent of the patient. Where the taxpayer makes a referral of the patient to an outside specialist, it is the taxpayer as a principal who has engaged the outside specialist to render medical services to the patient.”).
- **Det. 88-205, 5 WTD 387 (1988)**, determined that for B&O tax purposes, fees received for the doctors that were withheld and paid over by prior agreement into a deferred compensation arrangement for the doctors were constructively received by the doctors and could be deducted by the HMO, but needed to be included in the doctor’s gross income for B&O purposes at the time received by the HMO. This determination was overruled by 8 WTD 247.
- **Det. 89-467, 8 WTD 247 (1989)**, decided that deferred doctor’s fees were not constructively received by the doctor, but would be included in the gross income of the HMO. The payment of these amounts at a later time to the doctors would not be subject to B&O tax.
- **Det. 89-512, 8 WTD 373 (1989)**, Public hospital is not a subscriber/membership organization contracting on behalf of physician association.
- **Det. 98-151E, 18 WTD 074 (1999)**, without analysis, determined that insurance provider acting as fiscal intermediary for Medicare payments for HCFA (Health Care Financing Administration) was taxed as provided under Rule 233.

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **RCW 82.04.322 Exemptions—Health maintenance organization, health care service contractor, certified health plan; and**



- **RCW 48.14.0201 Premiums and prepayments tax—Health care services—State preemption.**

10. Review Recommendation:

☒ Amend

☐ Repeal

☐ Leave as is

☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

This rule should be revised to incorporate information now provided in RCW 82.04.322, ETA 519, AD 8233.1, and Det. 89-467, 8 WTD 247 (1989).

11. Manager action: Date: _____

☐ Reviewed recommendation ☐ Accepted recommendation

☐ Returned for further action

Comments: